

APPEAL NO. 010098

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2000. The hearing officer determined that there was no bona fide offer of employment. Appellant (carrier) appealed this determination on sufficiency grounds. Respondent (claimant) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that employer did not make a bona fide offer of employment. The employer made an offer of employment to the claimant dated February 29, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(c) (Rule 129.6(c)), effective December 26, 1999, states, in relevant part, as follows:

An employer's offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the Commission [Texas Workers' Compensation Commission]. A copy of the Work Status Report on which the offer is being based shall be included with the offer as well as the following information:

- (1) the location at which the employee will be working;
- (2) the schedule the employee will be working;
- (3) the wages that the employee will be paid;
- (4) a description of the physical and time requirements the position will entail; and
- (5) a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary.

The February 29, 2000, letter sent to the claimant did not indicate that a copy of the work status report [TWCC-73] from Dr. U was attached, and carrier did not assert that such was attached. Dr. U was claimant's treating doctor when the letter was sent. The offer also did not contain "a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary." Therefore, the offer did not comply with Rule 129.6(c) and was not a bona fide offer of employment pursuant to that rule. We have reviewed the hearing officer's determination and we conclude that it is not so against the great weight and preponderance of the

evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Susan M. Kelley
Appeals Judge